



State of North Carolina

Department of Justice

P. O. Box 629
RALEIGH
27602-0629

ROY COOPER
ATTORNEY GENERAL

REPLY TO: Thomas J. Ziko
Education Section
Telephone: (919) 716-6920
FAX: (919) 716-6764

October 2, 2001

Mr. Brad Sneed
Deputy Superintendent of Public Instruction
Department of Public Instruction
301 N. Wilmington Street
Raleigh, North Carolina 27601 2825

RE: Advisory Opinion; Charter Schools' Eligibility to Participate in the Private Capital Facilities Finance Act; G. S. 159D et seq.

Dear Brad:

You have asked this office for an opinion as to whether charter schools are eligible for financing pursuant to Article 2, Chapter 159D of the North Carolina General Statutes entitled, "Private Capital Facilities Finance Act." We are of the opinion that the Article does apply to charter schools.

The Act permits certain educational institutions to access certain bond proceeds and applies to both institutions for higher education and institutions for elementary and secondary education. The definition of "institution for elementary and secondary education" is:

a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination of these.

G.S. 159D-37(4a)(emphasis added). Charter schools are operated by nonprofit corporations in North Carolina. G.S. 115C-238.29E(b). While a charter school receives public monies, its private non-profit board operates the school, employs the staff, and determines the curriculum and policies of the school. There is no board answerable to the general public that governs the school.


Aside from the fact that charter schools are operated by nonprofit corporations, many of the purposes set out in the Act are remarkably similar to the purposes outlined in the Charter School Law. Compare G.S. 115C-238.29A with G.S. 159D-36 ("improve student learning";

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September 27, 2001
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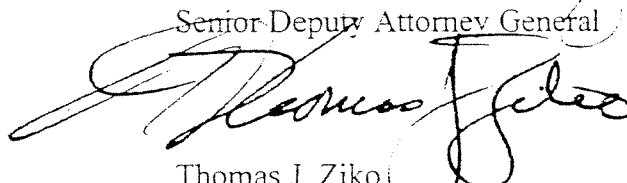
"increase learning opportunities for all students"; "encourage the use of different and innovative teaching methods"; "create new professional opportunities for teachers"; "provide parents and students with expanded choices.") With such similar purposes set out in both statutes, it would seem reasonable to assume that the legislature intended for charter schools to benefit from the capital assistance available under Article 2 of Chapter 159D. In our opinion, a charter school qualifies as an institution that may participate in the program.

We hope this adequately addresses your inquiry. Should you have further questions, please do not hesitate to contact us.

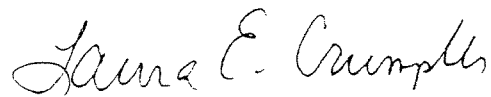
Sincerely,



Grayson G. Kelley
Senior Deputy Attorney General



Thomas J. Ziko
Special Deputy Attorney General



Laura E. Crumpler
Assistant Attorney General

LEC:scd